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 14 JPMorgan Chase Bank, N.A.,
 15 as acquirer of certain assets and liabilities of
 16 Washington Mutual Bank from the Federal
 17 Deposit Insurance Corporation, acting as receiver,
 18 and California Reconveyance Company

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

17 EASTON HARVEY, an individual,)

18 Plaintiff,)

19 v.)

20 WASHINGTON MUTUAL BANK, F.A.;)
 21 JP MORGAN CHASE BANK, N.A.;)
 22 CALIFORNIA RECONVEYANCE)
 23 COMPANY; EXECUTIVE TRUSTEE)
 24 SERVICES, LLC; MERSCORP, INC., a)
 25 Virginia Corporation; MORTGAGE)
 26 ELECTRONIC REGISTRATION SYSTEMS,)
 27 INC., a subsidiary of MERSCORP, Inc., a)
 28 Delaware corporation; AND DOES I)
 individuals 1 to 100, Inclusive; and ROES)
 Corporations 1 to 30, Inclusive; and all other)
 persons and entities unknown claiming any)
 right, title, estate, lien or interest in the real)

) CASE NO. 2:10-cv-01807-PMP-PAL

) **REPLY OF DEFENDANT JPMORGAN**
) **CHASE BANK, N.A. AND CALIFORNIA**
) **RECONVEYANCE COMPANY TO**
) **PLAINTIFF'S RESPONSE IN**
) **OPPOSITION TO DEFENDANTS'**
) **MOTION TO DISMISS COMPLAINT**

1 property described in the Complaint adverse to)
 2 Plaintiff's ownership, or any cloud upon)
 3 Plaintiff's title thereto,)

4 Defendants.)
 5 _____)

6 Defendants JPMorgan Chase Bank, N.A., as acquirer of certain assets and liabilities of
 7 Washington Mutual Bank from the Federal Deposit Insurance Corporation, acting as receiver
 8 ("Chase") and California Reconveyance Company ("CRC") (collectively "Defendants"), by and
 9 through their counsel, hereby submit their Reply to "Plaintiff's Response in Opposition to
 10 Defendants' Motion to Dismiss Complaint" (Docket Entry 18) (the "Opposition"). This Reply is
 11 based upon and supported by the following Memorandum of Points and Authorities, the record
 12 herein, and any argument that may be presented at any hearing hereon.

13 DATED this 29 day of November, 2010.

14 SMITH LARSEN & WIXOM

15 
 16 _____
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24 JPMorgan Chase Bank, N.A., as acquirer of certain

25 assets and liabilities of Washington Mutual Bank from the Federal

26 Deposit Insurance Corporation, acting as receiver,

27 and California Reconveyance Company
 28

MEMORANDUM OF POINTS AND AUTHORITIES

I. THE OPPOSITION FAILS TO ADDRESS ANY OF THE SUBSTANTIVE ISSUES RAISED IN THE MOTION TO DISMISS.

A review of the Opposition filed by Plaintiff on November 22, 2010 reflects that Plaintiff's Opposition has failed to address any of the substantive arguments raised in Defendants' Motion to Dismiss. Of particular import is that Plaintiff fails to address that summary judgment was entered against him by Judge Dawson in his earlier case before this Court — Case No. 2:09-CV-02025-KJD-RJJ, (entitled *Easton Harvey v. California Reconveyance Company, JPMorgan Chase Bank, National Association, et al.*). The earlier case raised certain of the claims Plaintiff has attempted to raise in this action, and Plaintiff should have raised all of his claims in that action but chose not to do so. He chose not to raise other claims, and they are therefore barred.

Additionally, LR 7-2(d) provides that “[t]he failure of an opposing party to file points and authorities in response to any motion *shall* constitute a consent to the granting of the motion.” (Emphasis added.) Accordingly, pursuant to LR 7-2(d), the Court should dismiss each of Plaintiff's claims for relief.

II. THE ONLY POINTS RAISED IN THE OPPOSITION ARE INAPPOSITE TO THE ISSUES RAISED IN THE MOTION

In the second sentence of the Opposition, “Plaintiff ... makes a universal objection to each and every argument of the Defendant's Demurrer.”¹ (See Opposition, p. 1, ll. 22-23.) Thereafter, Plaintiff asserts four main arguments why the motion to dismiss should be denied: (1) Defendants

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On page 3 of the Opposition, Plaintiff cites to several California state court cases regarding the demurrer standard. These cases are unavailing because Defendants filed a Rule 12(b)(6) motion to dismiss, not a demurrer, and federal law governs in any event.

1 are equitably estopped from seeking dismissal of this action; (2) discovery has not yet occurred; (3)
 2 the Complaint adequately pleads facts in support of each cause of action; (4) Plaintiff has a vested
 3 interest to pursue his causes of action against Defendants. (*Id.*, pp. 2-5.) None of these arguments
 4 has any merit and Plaintiff's Complaint should be dismissed.
 5

6 Plaintiff's first argument is unsustainable because, among other reasons, Defendants are
 7 entirely within their rights to file a Fed.R.Civ.P. 12(b)(6) motion at the outset of this litigation. This
 8 is particularly the case where, as here, summary judgment was entered against Plaintiff in Case No.
 9 2:09-CV-02025-KJD-RJJ.
 10

11 Plaintiff's second argument is unsustainable because one of the primary purposes of Rule
 12 12(b)(6) motions is to enable defendants to get out of unfounded lawsuits at an early stage to avoid
 13 unnecessary litigation expenses. *See, e.g., Advanced Cardiovascular Sys., Inc. v. Scimed Life Sys.,*
 14 *Inc.*, 988 F.2d 1157, 1160 (Fed. Cir. 1993); *Port Auth. of N.Y. & N.J. v. Arcadian Corp.*, 189 F.3d
 15 305 (3d Cir. 1999).
 16

17 Plaintiff's third argument is wholly conclusory and must be rejected. *See Ashcroft v. Iqbal*,
 18 192 S.Ct. 1373, 1377 (2009). The Motion to Dismiss plainly demonstrates how none of Plaintiff's
 19 claims for relief is legally or factually sustainable, and Plaintiff's conclusory assertion to the contrary
 20 must be rejected.
 21

22 Finally, Plaintiff's fourth argument is unsustainable because any interest Plaintiff may have
 23 had to pursue claims against Defendants related to the subject loan was extinguished when summary
 24 judgment was granted against Plaintiff in Case No. 2:09-CV-02025-KJD-RJJ. Moreover, to the
 25 extent Plaintiff may have had the right to bring any of the claims herein, the claims are wholly
 26 unsustainable and Fed.R.Civ.P. 12(b)(6) permits dismissal of such claims on motion.
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 28

1 In short, none of the arguments in Plaintiff's Opposition in any way revives Plaintiff's
2 unfounded Complaint. Accordingly, the Complaint should be dismissed with prejudice.

3 **III. PLAINTIFF'S REQUEST TO AMEND HIS COMPLAINT SHOULD BE DENIED**

4 On page 5 of the Opposition, Plaintiff requests leave to amend his Complaint in the event that
5 the Court finds some deficiency in the Complaint. Plaintiff's request to amend should be denied.

6 While Fed.R.Civ.P. 15(a)(2) provides that courts may grant leave to amend when justice so
7 requires, this does not mean that a trial judge may not, in a proper case as here, deny a motion to
8 amend. It has long been established that denial of leave to amend is proper where the proposed
9 amendment would be futile or is done in bad faith. *Foman v. Davis*, 371 U.S. 178, 182 (1962);
10 *Newland v. Dalton*, 81 F.3d 904, 907 (9th Cir. 1996) (futile amendments should not be
11 accommodated); *Loehr v. Ventura Cty. Comm. College Dist.*, 743 F.2d 1310, 1319-20 (9th Cir.
12 1984); *Jefferson County Sch. Dist. No. R-1 v. Moody's Investor's Services, Inc.*, 175 F.3d 848, 859
13 (10th Cir. 1999); *Wisdom v. First Midwest Bank, of Poplar Bluff*, 167 F.3d 402, 409 (8th Cir. 1999)
14 ("[P]arties should not be allowed to amend their complaint without showing how the complaint
15 could be amended to save the meritless claim."); *Bailey v. Sullivan*, 885 F.2d 52, 59 (3d Cir. 1989)
16 ("No purpose would be served by allowing [an] ... amendment to the complaint to add a challenge
17 which would be dismissed.").

18 Plaintiff's request to amend his Complaint should be denied. As noted above, the dispositive
19 outcome – on the merits – in Case No. 2:09-CV-02025-KJD-RJJ means that this lawsuit is barred
20 by the doctrine of claim preclusion as this case as both relate to the same transaction and occurrences
21 regarding the loan in issue. *See Five Star Capital Corp. v. Ruby*, 124 Nev. Adv. Op. No 88, 194
22 P.3d 709, 713 (Oct. 30, 2008). Moreover, the Motion to Dismiss dispels each of Plaintiff's claims
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1 for relief and Plaintiff has not rebutted any of the arguments raised therein. Nor has he presented
 2 any argument or factual allegation to demonstrate the ability to assert a viable claim in an amended
 3 pleading. Plaintiff has not demonstrated, and cannot demonstrate, an ability to cure his meritless
 4 Complaint, and his request to amend would be futile and unnecessarily prolong this unfounded
 5 action. In short, Plaintiff's request to amend is unsupported and futile, and it should be denied. *See,*
 6 *e.g., Foman*, 371 U.S. at 182; *Newland*, 81 F.3d at 907; *Jefferson County Sch. Dist. No. R-1*, 175
 7 F.3d at 859; *Wisdom*, 167 F.3d at 409; *Bailey*, 885 F.2d at 59.²

8 IV. CONCLUSION

10 Plaintiff's Complaint is unsustainable because it is a repeat pleading that attempts to re-
 11 litigate matters that were already considered and rejected by this Court, and is therefore barred by
 12 the doctrine of preclusion. Moreover, the Complaint fails to assert any legally cognizable claims.
 13 As a result, Plaintiff's Complaint should be dismissed with prejudice.
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19 The request to amend should also be denied because Plaintiff has not attached a copy of the proposed
 20 amended pleading, as required under Local Rule 15-1.
 21

1 Chase and CRC further respectfully request that the Lis Pendens that Plaintiff recorded
2 against the property that is the subject of this action be cancelled and expunged. .
3

4 DATED this 29 day of November, 2010.
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6 SMITH LARSEN & WIXOM
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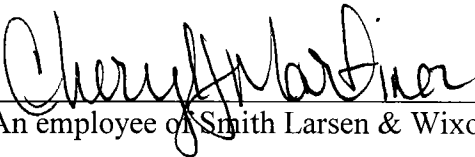
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of November, 2010, a true copy of the foregoing Reply of Defendant JPMorgan Chase Bank, N.A. and California Reconveyance Company to Plaintiff's Response in Opposition to Defendants' Motion to Dismiss Complaint, was served electronically via CM/ECF, or by mail, postage prepaid, to the following:

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eastonharvey@hotmail.com
Plaintiff in Pro Per
(Served via U.S. Mail)


An employee of Smith Larsen & Wixom